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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 180208146-8946-01]**

**RIN 0648-XG025**

**Pacific Island Pelagic Fisheries; 2018 U.S. Territorial  
Longline Bigeye Tuna Catch Limits**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final specifications.

**SUMMARY:** In this final rule, NMFS specifies a 2018 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). NMFS will allow each territory to allocate up to 1,000 t each year to U.S. longline fishing vessels in a valid specified fishing agreement. As an accountability measure, NMFS will monitor, attribute, and restrict (if necessary), catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

**DATES:** The final specifications are effective [*insert date of filing for public inspection at the Office of the FEDERAL REGISTER*], through December 31, 2018. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b) (3) for review is [*insert date 30 days after date of filing for public inspection at the Office of the FEDERAL REGISTER*].

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. Copies of those analyses, which include a 2018 environmental assessment (EA) and a finding of no significant impact (FONSI), are available from [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0026](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0026), or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Walker, NMFS PIRO Sustainable Fisheries, 808-725-5184.

**SUPPLEMENTARY INFORMATION:** NMFS is specifying a catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. territory in 2018. NMFS is also authorizing each territory to allocate up to 1,000 t of its 2,000 t bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Pelagic FEP. NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (territorial catch limit), and/or vessels in a specified fishing agreement (allocation limit).

You may find additional background information on this action in the preamble to the proposed specifications published on August 8, 2018 (83 FR 39037).

#### **Comments and Responses**

On August 8, 2018, NMFS published the proposed specifications and request for public comments (83 FR

39037); the comment period closed on August 23, 2018. In light of the decision in *Territory of American Samoa v. NMFS, et al.* (16-cv-95, D. Haw), NMFS specifically invited public comments that would address the impact of the proposed action on cultural fishing in American Samoa. NMFS received no comments addressing cultural fishing.

NMFS received comments only from the Hawaii Longline Association (HLA) on the proposed specifications and the draft EA. NMFS considered the public comments, and responds to comments below.

*Comment 1:* NMFS should act thoughtfully and quickly in completing this rulemaking process. In past years, the deep-set fishery in the Western and Central Pacific Ocean (WCPO) and the Eastern Pacific Ocean (EPO) attained the U.S. bigeye tuna catch limits in each area. As a result, many U.S. deep-set vessels were unable to fish because they were not able to allocate catch pursuant to already-executed specified fishing agreements. Such delays in rulemaking impede the achievement of the goals of the Pelagic FEP.

*Response:* NMFS reviews the proposed catch and allocation limits for consistency with the provisions of the Magnuson-Stevens Act, the Pelagic FEP, decisions of the Western and Central Pacific Fisheries Commission (WCPFC),

and other applicable laws. This review requires preparation of comprehensive supporting environmental analyses to ensure the conservation of affected fish stocks and protected species. While NMFS is committed to preparing analyses before the fishery could reach the WCPO bigeye tuna limit, we also encourage HLA to consider industry-led actions in both the WCPO and the EPO that might reduce the likelihood of reaching a catch limit, or otherwise alleviate the impact of a closure.

*Comment 2:* The proposed rule will provide substantial benefits for the Hawaii-based longline fisheries, the Hawaii seafood market, the territories, and protected species.

*Response:* NMFS agrees. We are satisfied that this action (which is identical to the catch and allocation limits implemented in 2017 (82 FR 47642, Oct. 13, 2017)) addresses the conservation and management needs of bigeye tuna in the western and central Pacific Ocean, and considers the needs of fishing communities of the U.S. Pacific Islands, and the impacts to protected species.

*Comment 3:* Transferred effects caused by closing Hawaii-based longline fisheries have detrimental impacts on local Hawaii seafood markets and on protected species that are caught more frequently by foreign fisheries. HLA

provided copies of scientific papers on transferred effects, and requested that NMFS include these papers, along with its comment letter, in the administrative record for this rulemaking.

*Response:* NMFS acknowledges the concept of transferred effects during a closure of the U.S. longline fleet, and we have posted HLA's comment letter and enclosures at [www.regulations.gov](http://www.regulations.gov).

*Comment 4:* The issuance of the proposed rule will have no significant impacts on the WCPO bigeye tuna stock.

*Response:* NMFS agrees, and is satisfied that this action is consistent with the conservation and management needs of bigeye tuna in the WCPO.

*Comment 5:* HLA notes that the proposed limits are substantially more stringent than conservation measures adopted by WCPFC, which do not establish any bigeye limits for the Territories, and questions whether there is a factual basis to limit each territory to a 1,000 t allocation.

*Response:* This action implements the recommendation from the Council's 172nd meeting, in March 2018, that NMFS specify for each U.S. participating territory, a 2,000 t longline bigeye catch limit and specify that each territory can each allocate up to 1,000 t of their bigeye catch

limit. Utilizing the best scientific information available, NMFS has determined that these catch and allocation limits are consistent with WCPFC objectives to conserve the bigeye stock. NMFS agrees that the WCPFC has not adopted bigeye limits for the U.S. Territories, and notes that the Council has recommended amending the Pelagic FEP and Federal regulations to remove the requirement that NMFS must first specify catch limits for the territories before specifying allocation limits, but the Council has not yet developed the recommended amendment.

*Comment 6:* HLA disagrees with the conclusions of the draft EA that the deep-set fishery may have some (albeit very limited) adverse effect on the insular false killer whale stock, because NMFS observers have never recorded an interaction in the very small area in which fishing effort and the designated range of the insular stock currently overlap.

*Response:* The conclusion that the Hawaii deep-set longline fishery is likely to adversely affect the main Hawaiian Islands insular false killer whale stock is based on NMFS determinations made in the most recent (2014 as supplemented in 2017) biological opinion for the fishery, which we reference in the EA. While we agree that observers have not recently documented interactions in the area where

fishing effort and the designated range of the insular stock currently overlap, based on historical data and fishing gear employed, NMFS anticipates that low levels of fishery interactions are still likely to occur on trips within that overlap zone. NMFS applies a proration method described in the 2014 biological opinion that uses fishing effort inside and outside the U.S. EEZ around the MHI to attribute mortality and serious injury, a subset of total take, of false killer whales and unidentified black fish to the pelagic false killer whale stock, the northwestern Hawaiian Islands killer whale stock or the MHI insular false killer whale stock. The proration method also accounts for effort within the small area fishing effort and the insular stock overlap. Because this proration method results in attribution of take to the MHI insular false killer whale stock, NMFS, in the 2014 biological opinion, determined the fishery is likely to adversely affect this stock, but is not likely to jeopardize its continued existence.

*Comment 7:* Reference to the recent settlement in the shallow-set fishery litigation should clarify that the hard cap limit of 17 loggerhead sea turtles will be effective January 1, 2019, unless or until superseded by a new hard cap limit.



*Response:* NMFS has made this suggested change in section 3.3.1.2 of the EA.

*Comment 8:* The EA should clarify that the Southern Exclusion Zone closure is temporary, lasting only to the end of 2018.

*Response:* NMFS revised the text in EA sections 3.2.3.1, 3.3.2.1, and 4.3.1.1 to reflect the temporary nature of the closure.

*Comment 9:* As to protected species more broadly, it is more accurate to say that the proposed rule will not result in significant adverse effects to protected species (as opposed to "large adverse effects."

*Response:* NMFS agrees that the action implemented by this final rule will not result in significant impacts to protected species.

### **Classification**

The Regional Administrator, NMFS Pacific Islands Region, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule

stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule, and we do not repeat it here. NMFS received no comments on this certification; as a result, a regulatory flexibility analysis is not required, and none has been prepared.

Because this rule relieves a restriction, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). This rule allows U.S. vessels identified in a valid specified fishing agreement to resume fishing in the western and central Pacific Ocean (WCPO) if and when NMFS closes the longline fishery for bigeye tuna. On July 18, 2018, through a separate action, NMFS established the 2018 limit of 3,554 t of bigeye tuna caught by U.S. longline fisheries in the WCPO (83 FR 33851). When NMFS projects that the fishery will reach the limit, NMFS must close the fishery for bigeye tuna in the WCPO. Regulations at 50 CFR 665.819 require NMFS to begin attributing longline caught bigeye tuna to the U.S. territory to which a fishing agreement applies seven days before the date NMFS projects the fishery will reach the WCPO U.S bigeye tuna limit, or upon the effective date of the agreement, whichever is later.

Based on longline catch records to date, NMFS projects the fishery will reach the current 3,554 t limit of WCPO bigeye tuna in early November 2018. If the effectiveness of this final rule is delayed past the date the WCPO bigeye tuna limit is reached, NMFS would be required to publish a temporary rule that restricts the Hawaii-based longline fishery for WCPO bigeye tuna until this final rule is effective. After the effective date, NMFS would remove the restrictions for U.S. vessels identified in a valid specified fishing agreement with a U.S. territory. By implementing this rule immediately, it allows the Hawaii longline fishery to continue fishing without the uncertainty or disruption of a potential closure.

This action is exempt from review under E.O. 12866 because it contains no implementing regulations.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 17, 2018.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory  
Programs,

National Marine Fisheries Service.

